

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK

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4 In re:

5 Chapter 11

6 INDU CRAFT INC.,

7 Case No. 97-44958-RDD

8 Debtor.

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12 - - - - -x

13 MODIFIED BENCH RULING

14

15 A P P E A R A N C E S:

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5

6 HON. ROBERT D. DRAIN
U.S. BANKRUPTCY JUDGE

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8 I have before me two motions, both of which are
9 opposed by Bank of Baroda. The first is a motion that was made
10 over three years ago by Trendi Sportswear, Inc. under
11 Bankruptcy Rule 9023, which incorporates Federal Rule of Civil
12 Procedure 59. The second is a motion by Tze Wung Consultants,
13 Ltd. under Bankruptcy Rule 9024, which incorporates, with
14 certain modifications regarding the time within which to make
15 such a motion, Federal Rule of Civil Procedure 60.

16 Trendi and Tze Wung were both on the losing side of my
17 Order, dated August 15, 2007, rejecting various motions for an
18 order either amending the Chapter 11 plan confirmed in this
19 case by Bankruptcy Judge Gallett in his Confirmation Order
20 dated March 29, 1999, or granting related relief designed
21 ultimately to enable the preservation of claims of the debtor
22 herein against Bank of Baroda. The movants had sought such
23 relief because District Judge Martin had found that the
24 debtor's discharge under section 1141 of the Bankruptcy Code
25 under the debtor's Chapter 11 plan and as set forth in Judge

1 Gallett's Confirmation Order precluded the pursuit of such
2 claims against Bank of Baroda. See Bank of India v. Trendi
3 Sportswear, Inc., 2002 U.S. Dist. LEXIS 894, at *10-13
4 (S.D.N.Y. Jan. 17, 2002), aff'd 64 Fed. Appx. 827 (2d Cir.
5 2003), cert. denied, 540 U.S. 1074 (2003) (holding that the
6 debtor's fourth-party indemnification claim against Bank of
7 Baroda for amounts the debtor owed but had never paid Trendi on
8 Trendi's third-party claim -- which claim was discharged under
9 the debtor's Chapter 11 plan -- failed as a matter of law).

10 For reasons that remain unclear to me, I never ruled
11 on Trendi's motion under Bankruptcy Rule 9023 for
12 reconsideration of my August 15, 2007 Order. It is clear that
13 Trendi did not schedule a hearing on the motion, and Bank of
14 Baroda objected to the motion only on February 12, 2009,
15 approximately 18 months after the motion was filed (which
16 suggests that Bank of Baroda didn't know about it, either),
17 referring in its objection to having received a copy of
18 correspondence from Trendi to the Court, dated February 6,
19 2009, in which Trendi asked the Court to rule on the motion.
20 At the May 12, 2011 hearing on Trendi's motion, which the Court
21 scheduled after Tze Wung scheduled a hearing on its Rule 9024
22 motion (that motion having alerted the Court to Trendi's
23 motion), counsel for Trendi gave me his February 6, 2009 letter
24 to the Court, as well as a letter dated September 25, 2009, in
25 which he had requested me to rule on the motion.

1 It is not clear from the letters (which appear to be
2 originals), and counsel for Trendi cannot recollect, whether in
3 fact the letters were actually mailed to chambers in addition
4 to having been filed on ECF. If they were mailed to chambers,
5 clearly the fault in my not ruling after February 2009 lay with
6 me. If they were merely filed on ECF, given that Trendi had
7 not scheduled a hearing, the fault lay with Trendi, because it
8 is impossible for me, and therefore not my practice, to review
9 every filing on ECF to determine whether a matter is pending
10 before me. (The ECF docket in just one of the thousands of
11 cases and adversary proceedings pending before the Court has
12 over 21,000 entries.) Instead, it is counsel's responsibility
13 to schedule a hearing and/or let the Court know directly of the
14 need for the Court to do so. But whether the blame lies with
15 Trendi or the Court or both of us, Trendi has not waived its
16 rights under its Rule 9023 motion and is entitled to a ruling
17 on it.

18 As noted, I also have before me a motion, dated March
19 8, 2011, by Tze Wung Consultants, Ltd. for relief under
20 Bankruptcy Rule 9024 from my August 15, 2007 Order. That is,
21 Tze Wung's Rule 9024 motion was made over three-and-a-half
22 years after the issuance of the order from which it seeks
23 relief. (I should note that Tze Wung also appealed from the
24 August 15, 2007 Order, as did the debtor, but both appeals were
25 dismissed for lack of prosecution (Doc. ## 203 and 200,

1 respectively)). As noted below, however, because under
2 Bankruptcy Rule 8002(b)(3) Trendi's Rule 9023 motion stayed all
3 parties' time to appeal (although Tze Wung apparently did not
4 inform the District Court presiding over its appeal of Trendi's
5 Rule 9023 motion), the dismissal of Tze Wung's appeal is only
6 another indication of how Tze Wung has delayed challenging my
7 August 15, 2007 Order.

8 Both Trendi's and Tze Wung's motions are premised on
9 the same underlying basis: they contend that my August 15, 2007
10 Order should be reconsidered or vacated because the Court
11 erred.

12 **Trendi's Rule 9023 Motion**

13 Trendi asserts that the Court should not have found
14 that the debtor's Chapter 11 plan had been substantially
15 consummated, and, thus, under section 1127(b) of the Bankruptcy
16 Code was not capable of being modified, and should, instead,
17 have granted Trendi's motion for an order declaring that the
18 debtor's debt to Trendi was not discharged under the
19 Confirmation Order (therefore, in Trendi's view, enabling the
20 debtor to pursue its indemnification claim against Bank of
21 Baroda). To support its contention that the Chapter 11 plan
22 was not substantially consummated, Trendi asserts only that the
23 Court overlooked that "no assets were transferred to the
24 creditors or to the reorganized entity as required by the
25 [p]lan." See Trendi's Memorandum of Law at 1 (Doc. # 195),

1 although it points to no evidence supporting that assertion,
2 which, as discussed below, is clearly incorrect. (Trendi also
3 contends that the Court mistakenly found that the debtor's
4 Chapter 11 plan was a liquidating plan, id. at 2. However,
5 this contention would have no effect on my August 15, 2007
6 ruling if, in fact, it were true; its only consequence, if I
7 agreed with Trendi, would be to eliminate the basis for Tze
8 Wung's Rule 9024 motion, which is premised on the Chapter 11
9 plan being a liquidating plan.)

10 To prevail on its motion under Bankruptcy Rule 9023,
11 Trendi must show that the Court overlooked controlling
12 decisions or factual matters that might materially have
13 influenced the earlier decision or, alternatively, the need to
14 correct a clear error or prevent manifest injustice. In re
15 Coudert Bros. LLP, 2009 Bankr. LEXIS 2602, at *7-8 (Bankr.
16 S.D.N.Y. Sept. 8, 2009), aff'd 2010 U.S. Dist. LEXIS 58467
17 (S.D.N.Y. June 4, 2010). "The rule permitting reargument is
18 strictly construed to avoid repetitive arguments on issues that
19 the court has already fully considered. In addition, parties
20 cannot advance new facts or arguments because a motion for
21 reargument is not a mechanism for presenting the case under new
22 theories, securing a rehearing on the merits, or otherwise
23 taking a second bite at the apple." In re Vargas Realty
24 Enters., Inc., 2009 Bankr. LEXIS 2040, at *7-8 (Bankr. S.D.N.Y.
25 July 23, 2009) (internal citations omitted). See also In re

1 Lyondell Chemical Co., 2009 Bankr. LEXIS 724, at *2 (Bankr.
2 S.D.N.Y. Apr. 10, 2009); In re Adelphia Bus. Solutions, Inc.,
3 2002 Bankr. LEXIS 1604, at *3-4 (Bankr. S.D.N.Y. Oct. 15, 2002)
4 ("This rule is intended "to insure the finality of decisions
5 and to prevent the practice of a losing party examining a
6 decision and then plugging the gaps of a lost motion with
7 additional matters."); 12 Moore's Federal Practice ¶ 59.30[6]
8 (3d ed. 2008), at 59-116 ("A Rule 59(e) motion to alter or
9 amend a judgment may not be used to relitigate the same matters
10 already determined by the court. Further, a motion to alter or
11 amend generally may not be used to raise arguments, or to
12 present evidence, that could reasonably have been raised or
13 presented before the entry of judgment.").

14 The Trendi motion does not set forth a valid basis for
15 requiring reconsideration of the Court's August 15, 2007 Order.
16 The Order, I believed, and continue to believe, was not
17 manifestly in error, and I'm not going to take upon myself the
18 opportunity that courts have whenever confronted by a timely
19 motion to reconsider to acknowledge that I made a mistake,
20 because, for the reasons set forth in my ruling attached to the
21 Order, I don't believe that I made a mistake. (The only
22 mistake, I believe, is a typo in my ruling, which refers to
23 sections 1141(a) and 1141(d)(2) of the Bankruptcy Code rather
24 than what it should have referred to, which is section
25 1141(d)(3) of the Bankruptcy Code.) The ruling sets forth the

1 basis for my conclusion that the motions that I heard in 2007
2 should not be granted, and therefore, they should properly be
3 dealt with on appeal and not on a motion for reconsideration
4 under Rule 9023, that Rule, as noted above, not being a device
5 for relitigating a matter that was properly considered.

6 Moreover, Trendi's original motion, which I denied in
7 my August 15, 2007 Order, did not assert that the Chapter 11
8 plan could be modified (and thus did not address the impediment
9 of Bankruptcy Code section 1127(b)); rather, Trendi contended
10 that the Court merely had to modify Judge Gallett's March 29,
11 1999 Confirmation Order in the interests of equity and the
12 parties' alleged intentions at the time, to provide that the
13 debtor would receive a discharge with the exception of Trendi's
14 claim. (This argument was incorrect for three reasons. First,
15 as stated in the bench ruling attached to the August 15, 2007
16 Order, the 180-day time limit in Bankruptcy Code section 1144
17 precluded such a modification of the Confirmation Order;
18 second, Bankruptcy Code section 1127(b)'s prohibition of the
19 modification of a plan that has been substantially consummated
20 cannot be circumvented by modifying the plan confirmation order
21 or under Bankruptcy Rule 9024. See In re Rickel & Assocs., 260
22 B.R. 673, 677, 678-79 (Bankr. S.D.N.Y. 2001); third, although
23 Trendi did not address this point, the debtor's discharge
24 appears not only in the Confirmation Order but also in ¶ 9.1(a)
25 of the Chapter 11 plan -- with no exceptions -- therefore,

1 modification of the Confirmation Order would have been a
2 modification of the plan, prohibited by section 1127(b).) Thus,
3 Trendi never addressed the issue that its Rule 9023 motion
4 seeks to raise: whether the substantial consummation of the
5 Chapter 11 plan precludes, under section 1127(b) of the
6 Bankruptcy Code, the modification that Trendi sought. Thus,
7 Trendi's Rule 9023 motion seeks merely to plug a gap in its
8 original argument, which, under the authorities discussed
9 above, is not a valid basis for Rule 9023 relief. See also In
10 re General Vision Servs, Inc., 352 B.R. 25, 28 (Bankr. S.D.N.Y.
11 2006).

12 Finally, on the merits, Trendi's contention that the
13 debtor's Chapter 11 plan was not substantially consummated is
14 clearly wrong. "Substantial consummation" under the Bankruptcy
15 Code is defined as "(A) transfer of all or substantially all of
16 the property proposed by the plan to be transferred; (B) the
17 assumption by the debtor or by the successor to the debtor
18 under the plan of the business or of the management of all or
19 substantially all of the property dealt with by the plan; and
20 (C) commencement of distribution under the plan." 11 U.S.C. §
21 1101(2). See also In re Loral Space & Communs. Ltd., 342 B.R.
22 132, 136-37 (S.D.N.Y. 2006); In re Spiegel Inc., 2006 Bankr.
23 LEXIS 2158, at *46 (Bankr. S.D.N.Y. Aug. 16, 2006); aff'd 2007
24 U.S. Dist. LEXIS 19633 (S.D.N.Y. Feb. 26, 2007), 269 Fed. Appx.
25 56 (2d Cir. 2008), cert. denied sub nom Stupakoff v. Otto, 129

1 S. Ct. 146 (2008). In the bench ruling attached to the August
2 15, 2007 Order, the Court set forth the reasons why it found
3 and concluded that the plan had been substantially consummated.
4 Trendi's motion does not cite any evidence in the record or
5 allegedly newly discovered to the contrary. Moreover, the
6 docket of this case shows that the debtor has acknowledged that
7 "the Plan has been fully implemented and administered in
8 accordance with the Plan," see debtor's Application for a Final
9 Decree (Doc. # 160), and that "the Debtor has made the
10 distribution to holders of Allowed Claims, as required by the
11 Confirmed Second Amended Plan of Reorganization, as Modified,"
12 see debtor's Report in Furtherance of Post-Confirmation Order
13 and Notice (Doc. # 143). In addition, paragraph E. of the
14 Confirmation Order provides that "Except as otherwise provided
15 for herein, or in the Modified Plan, on the Effective Date, all
16 assets and properties of the Estate shall revert in the Debtor
17 free and clear of all Liens, Claims and encumbrances. . . ,"
18 and it is clear from the Plan that the Effective Date of the
19 Plan occurred ten days after the entry of the Confirmation
20 Order (which, of course, was not stayed and has, since April 8,
21 1999, been a final order). See Second Amended Plan of
22 Reorganization of Indu Craft, Inc., as Modified at ¶¶ 1.27, 1.17,
23 1.33, 1.32, 7.9. See In re Spiegel, 2006 Bankr. LEXIS 2158, at *46
24 (referring to similar provision in confirmation order as
25 indicating substantial consummation).

1 **Tze Wung's Rule 9024 Motion**

2 Because of the one-year time limit applicable under
3 Federal Rule of Civil Procedure 60(c)(1) to Rule 9024 motions
4 based on Federal Rule of Civil Procedure 60(b)(1), (2) or (3),
5 and because the basis for Tze Wung's Rule 9024 motion cannot
6 lie in Federal Rule of Civil Procedure 60(b)(4) or (5), Tze
7 Wung must premise its Rule 9024 motion on the "any other reason
8 that justifies relief" provision of Federal Rule of Civil
9 Procedure 60(b)(6). That provision, like all of the provisions
10 of Rule 60(b), is governed by Rule 60(c)(1)'s requirement that
11 the motion have been made "within a reasonable time."

12 Tze Wung asserts that it has carried its burden under
13 Rule 60(b)(6) based on what it contends is the Court's alleged
14 manifest error of law in finding that the debtor's Chapter 11
15 plan and Judge Gallett's March 29, 1999 Confirmation Order
16 discharged the debtor notwithstanding that such a discharge was
17 not proper under section 1141(d)(3) of the Bankruptcy Code,
18 where the plan was a liquidating plan and the debtor did not
19 engage in business after consummation of the plan.

20 (Tze Wung also suggests, although the May 12, 2011
21 hearing record has made it clear that this suggestion is not
22 meaningful, that even if under normal circumstances I would
23 deny its Rule 9024 motion, I should not do so here because Tze
24 Wung is effectively precluded from appeal if I do. That basis
25 is not meaningful or relevant here because the parties,

1 including Bank of Baroda, acknowledge that under Bankruptcy
2 Rule 8002(b)(3) the pendency of Trendi's Rule 9023 motion has
3 effectively stayed any appeal from my August 15, 2007 Order,
4 including Tze Wung's, so that, in essence, my ruling on
5 Trendi's Rule 9023 motion would start the appeal clock
6 running.)

7 "Properly applied Rule 60(b) strikes a balance between
8 serving the ends of justice and preserving the finality of
9 judgments. In other words it should be broadly construed to do
10 'substantial justice,' yet final judgments should not 'be
11 lightly reopened.' The Rule may not be used as a substitute
12 for a timely appeal. Since 60(b) allows extraordinary judicial
13 relief, it is invoked only upon a showing of exceptional
14 circumstances," in the discretion of the trial court. Nemaizer
15 v. Baker, 793 F.2d 58, 61 (2d. Cir. 1986) (internal citations
16 omitted). Rule 60(b)(6), in particular, "is properly invoked
17 only when there are extraordinary circumstances justifying
18 relief, when the judgment may work an extreme and undue
19 hardship, and when the asserted grounds for relief are not
20 recognized in clauses (1)-(5)." Id. at 63 (internal citations
21 omitted). See also In re Teligent, Inc., 326 B.R. 219, 227
22 (S.D.N.Y. 2005); In re Taub, 421 B.R. 37, 42 (Bankr. E.D.N.Y.
23 2009); In re AMC Realty Corp., 270 B.R. 132, 143-44 (Bankr.
24 S.D.N.Y. 2001).

25 Although it has been held that Rule 60(b)(6) (rather

1 than Rule 60(b)(1), which, as noted above, is unavailable to
2 Tze Wung) may be invoked in compelling circumstances to correct
3 judicial error, see Krautheimer v. Krautheimer, 210 B.R. 37,
4 42-3 (Bankr. S.D.N.Y. 1997)(applying Rule 60(b)(6); but see
5 Schildhaus v. Moe, 355 F.2d 526, 530-31 (2d Cir. 1964) (per
6 curiam) (applying Rule 60(b)(1) to judicial error "in cases
7 with very special facts")), it is also well recognized that
8 "The limitation on the use of Rule 60 motions as a substitute
9 for appeal is especially true of motions under Rule 60(b)(6)."
10 In re Teligent, 326 B.R. at 227, quoting Eutectic Corp. v.
11 Metco, Inc., 597 F.2d 32, 34 (2d Cir. 1979). See also Leonard
12 v. Lowe's Home Ctrs., Inc., 83 Fed. Appx. 402, 304 (2d Cir.
13 2003). Thus the courts' strong reluctance to use Rule 60 to
14 correct an error of law, see In re Texlon Corp., 596 F.2d 1092,
15 1100 (2d Cir. 1979), should be especially great if, as here,
16 the movant waited over three-and-a-half years to seek such
17 relief. See Schildhaus v. Moe, 335 at 531 ("nothing in the
18 Rule, the cases, or the treatises suggest that a motion for
19 relief from judicial error more than eight months after the
20 entry of judgment is made 'within a reasonable time' as the
21 Rule requires").

22 In light of the foregoing and the record, Tze Wung's
23 Rule 9024 motion should be denied, on three alternative
24 grounds.

25 First, Tze Wung's motion was not made within a

1 reasonable time under Rule 60(c)(1). Although a "reasonable
2 time" for purposes of Rules 60(c)(1)/9024, is not defined, case
3 law provides substantial guidance in the light of the
4 underlying purpose of the Rule, which, as noted above is to do
5 justice in balance with recognizing the policy in favor of the
6 finality of judgments. The Court needs to consider the
7 particular circumstances of the case and balance the interest
8 in finality with the reasons for the movant's delay, a
9 consideration that is within the Court's discretion. See In re
10 Spiegel, 269 Fed. Appx. 56, 58 (2d Cir. 2008); Truskowski v.
11 ESPN, Inc., 60 F.3d 74, 77 (2d Cir. 1995); In re AMC Realty,
12 207 B.R. 144-45. Here, Tze Wung was represented by experienced
13 counsel (in contrast to the pro se litigant in Krautheimer, 210
14 B.R. at 37), and it has not alleged any facts suggesting that
15 it did not control the timing of its filings in this Court.
16 Moreover, the basis for its motion is an alleged error of law,
17 which, as discussed above, to the extent that it may ever serve
18 as a proper basis for relief under Rule 60(b)(6), should be
19 evoked diligently and only in extremely compelling
20 circumstances in this context, so that the Rule is not invoked
21 as a substitute for an appeal.

22 It is worth noting that Tze Wung's belief that its
23 appeal was handcuffed by the delay in my ruling on Trendi's
24 Rule 9023 motion (although there is nothing in the record to
25 suggest that it advised the District Court of the motion,

1 either before or after its appeal was dismissed for lack of
2 prosecution), clearly does not justify Tze Wung's lengthy delay
3 in filing its own motion under Rule 9024. To the contrary, Tze
4 Wung should have, if anything, become more proactive in light
5 of what it says was its being "handcuffed" by the delayed
6 ruling on Trendi's motion. In other words, it appears that
7 whether Tze Wung willingly handcuffed itself, or not, it was
8 unreasonable for Tze Wung to have waited over three-and-a-half
9 years to make its own motion. See In re Spiegel, 269 Fed. Appx.
10 At 58 (seven-month delay unreasonable); Truskowski, 50 F.3d at
11 77 (18-month delay unreasonable). See also Ackermann v. United
12 States, 340 U.S. 193, 1975-98 (1950) (extraordinary
13 circumstances for relief from judgment under Rule 60(b)(6) not
14 shown by movant who relied on ruling in co-defendant's appeal
15 when movant, himself did not appeal).

16 Second, Tze Wung's assertion of legal error does not
17 rise to the level of the "very special facts," "extraordinary
18 circumstances" or "extreme and undue hardship" under the
19 authorities discussed above warranting Rule 60(b)(6) relief.

20 Finally, Tze Wung's assertion of legal error is
21 incorrect. The premise of its Rule 9024 motion is that the
22 Court manifestly erred when it concluded, in the August 15 2007
23 Order, that the Chapter 11 plan and the March 29, 1999
24 Confirmation Order discharged the Debtor notwithstanding that
25 section 1141(d)(3) of the Bankruptcy Code precludes a

1 liquidating debtor from receiving a discharge.

2 Clearly, however, regardless whether Judge Gallett
3 erred in 1999 in confirming such a plan, the Confirmation Order
4 is final and no longer subject to appeal and the plan may not
5 be modified. The Confirmation Order clearly was res judicata
6 when I ruled on August 15, 2007, and that legal proposition has
7 since been confirmed twice by the Supreme Court. United
8 Student Aid Funds Inc. v. Espinosa, 130 S. Ct. 1367, 1377-80
9 (2010) ("[T]he Bankruptcy Court's failure to find undue
10 hardship before confirming Espinosa's plan was a legal error. .
11 . . But the order remains enforceable and binding on United
12 because United had notice of the error and failed to object or
13 timely appeal"); Travelers Indemnity Company vs. Bailey, 129 S.
14 Ct. 2195, 2206 (2009) (applying res judicata to collateral
15 attack on plan confirmation order even where the bankruptcy
16 court might have erroneously concluded that it had subject
17 matter jurisdiction).

18 Given this impediment, Tze Wung's motion makes a
19 second argument, which is that, even if the Confirmation Order
20 is res judicata, the Confirmation Order itself incorporated
21 section 1141 and, therefore, was limited by section 1141(d)(3)
22 and, therefore, notwithstanding the Order's provision that the
23 debtor is going to receive a discharge, it really didn't mean
24 it - instead, the real meaning of the Confirmation Order is
25 that the debtor will receive a discharge except that it won't

1 receive a discharge because the discharge is only pursuant to
2 1141.

3 This argument is particularly galling in that it is
4 presented as being manifestly true, yet is contradicted not
5 only by the clear language of paragraph 9.1(a) of the Plan
6 (which provides for an unqualified section 1141 discharge "from
7 all Claims against and Interests in the Debtor that arose prior
8 to the Effective Date") and paragraph F(1)(a) of the
9 Confirmation Order (which says the same thing), but also by Tze
10 Wung's underlying motion that I denied in the August 15, 2007
11 Order. Far from arguing that it is obvious that the Chapter 11
12 plan and Confirmation Order implicitly incorporate the
13 limitation in section 1141(d)(3) of the Bankruptcy Code, Tze
14 Wung's underlying motion does not even mention section
15 1141(d)(3). Instead, it contends that (a) the plan's failure
16 to carve out an exception to the discharge for Trendi's claim
17 against the debtor was "an obvious scrivener's error," (b) the
18 Court could still modify the plan under section 1127(b)
19 because, although distributions had been made, the anticipated
20 distributions in the event that the debtor prevailed against
21 Bank of Baroda had been thwarted by District Judge Martin's
22 decision, (c) the debtor could waive the discharge as to
23 Trendi, (d) the Court could use its general equity powers to
24 revoke the discharge of Trendi's claim, (e) "the Court should
25 temporarily suspend or lift the discharge provision of the

1 confirmation order," and (f) the Court could permit the debtor
2 to file another chapter 11 case to make the necessary changes
3 to the plan and confirmation order. Of course, each of these
4 arguments is contrary to the proposition, now advanced by Tze
5 Wung, that the Chapter 11 plan and Confirmation Order obviously
6 limit the reach of their discharge provisions by the
7 unexpressed but implicit incorporation of section 1141(d)(3).

8 In fact, I, myself, raised the section 1141(d)(3)
9 issue during oral argument, considered it and concluded that,
10 even if Judge Gallett did not have authority to grant a
11 discharge, his Confirmation Order was final, not subject to
12 appeal and res judicata and the plan could not be modified.
13 There was no suggestion that the parties intended to
14 incorporate section 1143(d)(3) into the plan or the
15 Confirmation Order.

16 Therefore, for each of the foregoing reasons, Trendi's
17 motion under Bankruptcy Rule 9023 is denied, and Tze Wung's
18 motion under Bankruptcy Rule 9024 is denied. Counsel for Bank
19 of Baroda can submit separate orders on both motions.

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21 Dated: White Plains, New York
22 July 1, 2011

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24 /s/Robert D. Drain
25 Hon. Robert D. Drain
United States Bankruptcy Judge

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